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IN THE

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**Supreme Court of the United States**

OCTOBER TERM, A. D. 1945

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No. 1115  
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BRUCE BORRELLI,  
*Petitioner,*

vs.

THE STATE OF ILLINOIS,  
*Respondent.*

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**PETITION FOR WRIT OF CERTIORARI TO THE  
SUPREME COURT OF ILLINOIS**

**and**

**BRIEF IN SUPPORT THEREOF**

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**PETITION FOR WRIT OF CERTIORARI TO THE  
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MAY IT PLEASE THE COURT:

The petition of Bruce Borrelli by Wm. Scott Stewart,  
his counsel, respectfully shows to this Honorable Court:

**A.**

**SUMMARY STATEMENT OF MATTER INVOLVED.**

Petitioner was convicted of conspiracy in the Criminal Court of Cook County. In order to not waive the constitutional questions, he took his cases to the Supreme Court direct, but they were transferred to the Appellate Court for the reason that the Supreme Court could per-

ceive no constitutional question involved. This method preserves our points and there is no claim that they have been waived. Petitioner claimed in the trial court that he was denied due process of law as guaranteed by the Fourteenth Amendment to the Constitution of the United States.

Conspiracy is a misdemeanor under our law and the Appellate Court took jurisdiction, the judgments were affirmed and this action by the intermediate court was affirmed by our Supreme Court. There are three judgments involved. In one case the trial court acquitted petitioner, which, of course, has put an end to that case. In two cases the trial court entered sentences. Our Supreme Court at first agreed with one of our contentions and reversed one of the two cases, but upon rehearing affirmed both.

In this court we abandon many of the errors claimed below for the reason that your Honors no doubt will accept the adverse ruling rendered by our Supreme Court. We address ourselves to two points here, and if they are clearly understood at the start, much of the record including portions of the opinions below can be disregarded.

The points we make have been decided against us, but we ask that your Honors determine, from the record, if they have been correctly decided. If the highest court of our State has erred on these points, petitioner has been deprived of due process. Our points are:

1. There was no proof of the *corpus delicti* outside of the confession.
2. The confession was involuntary.
3. Petitioner had been in jeopardy.

With our points in mind, your Honors can readily obtain the leading facts from the opinion of our Supreme Court. It is not mentioned therein, however, that peti-

tioner is the son of a local judge, and that the chief desire of the prosecutor was to obtain the conviction of Keeshin. Nor is it mentioned that Keeshin was not only acquitted but he was absolved by the trial court. Thus the keystone, the arch was removed and our Supreme Court proceeded to build a new structure without support in the record. The importance of keeping in mind the relationship of petitioner to his father is that the father was instrumental in bringing about the confession. The trial court expressed itself in a written opinion (Abst. 139) as being of the opinion that promises had been made. We submit that the trial court erred in a failure to give the effect required by the law to these promises. Although our Supreme Court has stated many correct principles of law, we submit that our real points urged here have been passed over.

A brief statement of the case is as follows:

Petitioner slugged some employees of the Keeshin Company in one case and hit Gottlieb, a rival of Keeshin's, in the other case. The theory of the State was, and the charge in the indictment is, that petitioner did these things at the request of Keeshin. Keeshin denied this and the trial court found from the evidence (Abst. 239), that Keeshin was shown to have been not guilty.

Petitioner went before the grand jury and testified that Keeshin told him to beat up the employees. The State intended to use petitioner as a witness against Keeshin, but after a jury was sworn in the main case and petitioner was called as a witness, petitioner refused to testify. Then the State turned on petitioner and used his grand jury testimony as a confession. This confession was repudiated below and it is now claimed here that the trial court erred in not holding that the rights of petitioner guaranteed by the federal constitution had been denied him, and we now contend that our Supreme Court erred in its approval of the judgments.

## B.

## SPECIFICATION OF ERRORS TO BE URGED.

1. There was no proof of the *corpus delicti* outside of the confession.
2. The confession was involuntary and its admission deprived petitioner of due process of law as guaranteed by the Fourteenth Amendment to the Constitution of the United States.
3. Petitioner had been in jeopardy, and his subsequent conviction was a denial of due process.

## C.

## BASIS OF THE COURT'S JURISDICTION.

This Honorable Court may, by certiorari, have this cause certified to it for determination under the act of February 13, 1925, 43 Stat. 936, 937, Ch. 229, amending and re-enacting Sec. 240 (a) of the Judicial Code, 28 U.S.C.A., Secs. 344, 347. The judgment of highest court of our State became final January 23, 1946.

## D.

## QUESTIONS PRESENTED.

1. Has petitioner been deprived of due process of law as guaranteed by the Fourteenth Amendment to the Constitution of the United States?
2. In holding that the *corpus delicti* was established by circumstances outside of the confession, has there been a denial of due process?
3. In holding that the confession was voluntary, did the State courts deny due process?
4. Has petitioner been twice put in jeopardy in violation of his constitutional rights?

## E.

## AUTHORITIES.

## I.

It is the general rule both under statutes and at common law that an extrajudicial confession does not warrant a conviction unless it is corroborated by independent evidence of the *corpus delicti*.

*People v. Hauck*, 362 Ill. 266.

*Wistrand v. People*, 213 Ill. 72.

## II.

More than one person must be guilty to sustain conviction for conspiracy.

*People v. LaBow*, 282 Ill. 227.

*Evans v. People*, 90 Ill. 384.

## III.

No person shall be compelled in any criminal case to give evidence against himself, or be twice put in jeopardy for the same offense.

Art. II, sec. 10, Constitution of 1870.

## IV.

A conviction based upon an involuntary confession is void under the due process clause of the Fourteenth Amendment.

*Brown v. Mississippi*, 297 U. S. 278.

*Chambers v. Florida*, 309 U. S. 227.

*White v. Texas*, 309 U. S. 631, rehearing denied 310 U. S. 530.

**REASONS FOR GRANTING WRIT.**

The Supreme Court of Illinois has failed to perceive that petitioner has been deprived of due process of law.

State Courts equally with Federal Courts are obliged to guard every right secured by the United States Constitution.

